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Department of the Treasury

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PLR-123334-06

Date: APRIL 13, 2007

In Re:

Re:

LEGEND:

Husband	-
Wife	-
Trust	-

Date 1	-
Year 1	-
Year 2	-
X	-

Y	-
CPA	-
State	-

Dear :

This is in response to a letter dated January 30, 2006, submitted by your authorized representative requesting rulings under §§ 2642(g) and 2632(c)(5) of the Internal Revenue Code and § 301.9100 of the Procedure and Administration Regulations with respect to Trust.

Husband and Wife reside in State. On Date 1, Husband established an irrevocable trust, Trust, for the primary benefit of his children and descendants. On Date 1, Husband contributed property X to Trust.

PLR-123334-06

CPA prepared Forms 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) for the transfer and Husband and Wife elected to split gifts under § 2513. However, in the preparation of the Forms 709, CPA inadvertently failed to allocate any of Husband's and Wife's GST exemption to Trust on their respective Forms 709. The errors were discovered in a recent review of Husband's and Wife's estate plan.

In year 2, Husband transferred Y to Trust and a gift-split election was made. The transfer to Trust was reported on Schedule A, Part 1 (Gifts Subject Only to Gift Tax), and no allocation of Husband's and Wife's GST exemption was made to Trust.

Husband requests (i) an extension of time to allocate his GST exemption to the Year 1 transfer to Trust; (ii) such allocation is to be based on the value of the property transferred to Trust on the date of the transfer, and (iii) that the Year 2 transfer to Trust is subject to the automatic allocation rules under § 2632(c).

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a), as in effect for the tax years at issue, provided that, for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(c)(1), effective for transfers subject to the gift and estate tax after December 31, 2000, provides, in part, that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero.

Section 2632(c)(3)(A) provides that the term "indirect skip" means any transfer of property (other than a direct skip) subject to the gift tax made to a GST trust. Section 2632(c)(3)(B) provides, in part, that the term "GST trust" means a trust that could have a generation-skipping transfer with respect to the transferor unless the trust falls within any of six enumerated exceptions.

Section 2632(c)(5)(A) provides that an individual may elect to have this subsection not apply to an indirect skip, or any or all transfers made by such individual to a particular trust.

PLR-123334-06

Section 2652(a) and § 26.2652-1(a)(4) of the Generation-Skipping Transfer Tax Regulations provide that, if, under § 2513, one-half of a gift is treated as made by an individual and one-half is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)) and such allocation shall be effective on the date of such transfer.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2).

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute. See Notice 2001-50, 2001-2 C.B. 189.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

PLR-123334-06

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Under § 26.2652-1(a)(4), Wife is treated, for GST purposes, as the transferor of one-half of the entire value of the property transferred by Husband, regardless of the interest Wife is actually deemed to have transferred under § 2513. For GST purposes, Husband and Wife are each treated as the transferor of one-half of the value of the entire property transferred to Trust. Therefore, Husband is granted an extension of time of 60 days from the date of this letter to make an allocation of Husband's available GST exemption, with respect to Husband's transfer to Trust in Year 1. The allocation will be effective as of the date of the transfer, and the value of the transferred assets to Trust as of the date of the original transfer to Trust will be used in determining the amount of Husband's GST exemption to be allocated to Trust. Trust's inclusion ratio will be determined under §§ 2642(a) and 2642(b).

A GST trust is defined in § 2632(c)(3)(B). In general, any trust that could have a generation-skipping transfer is a GST Trust unless it meets one of the exceptions described in § 2632(c)(3)(B)(i) through (vi) where a sufficient possibility exists (based on the statutory criteria) that the trust corpus will not be distributed to lower generations. Based upon the facts submitted and representations made, none of the exceptions in § 2632(c)(3)(B) apply to Trust and, accordingly, Trust is a GST Trust for purposes of § 2632(c). Therefore, we conclude that the automatic allocation rules under § 2632(c)(1) apply to the Year 2 transfer to Trust.

PLR-123334-06

Husband should make the allocation on a supplemental Form 709 for Year 1. The form should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the form.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter